

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Cellco Partnership D/B/A Verizon Wireless)
File No.: EB-TCD-22-00034021
NAL/Acct. No.: 202232170005
FRN: 0003290673

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 8, 2022

Released: July 8, 2022

By the Acting Chief, Enforcement Bureau:

I INTRODUCTION

1. Congress enacted the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to ensure that people with disabilities have access to innovative 21st century communications technologies.1 The CVAA included new requirements to support enforcement of accessibility obligations.2 In implementing these enforcement requirements, the Commission established an informal complaint process that allows parties to seek action where an equipment manufacturer or service provider is alleged to have violated sections 255, 716, or 718 of the Communications Act of 1934, as amended, (Act) or the applicable Commission rules (Rules).3 Within 180 days of the filing of an informal complaint, the Commission must issue an order determining whether the manufacturer or service provider violated sections 255, 716, or 718 of the Act, or the Commission’s implementing rules.4 Therefore, the Commission relies on equipment manufacturers and service providers to provide timely and complete responses to requests for information related to such informal complaints in order to determine whether there is a violation of the Act or Rules.

2. An individual with disabilities filed an informal complaint with the Commission’s Enforcement Bureau (Bureau) against Cellco Partnership d/b/a Verizon Wireless (Verizon or Company), alleging that the Company’s Premium Visual Voicemail service was not accessible. Verizon failed to provide the Bureau with the information that was needed to determine whether the service was accessible, and that Verizon was required to provide. The Bureau therefore proposes a penalty of \$100,000 against Verizon for apparently violating section 503(b)(1)(B) of the Act and section 14.36(a), (b)(1)(v) of the Rules.

I. BACKGROUND

A. Legal Framework

3. Section 14.31 of the Rules requires a service provider subject to sections 255, 716, or 718 of the Act to create in the ordinary course of business, and maintain for a specified time, records of its

1 Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, CG Docket No. 10-213, Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, WT Docket No. 96-198, Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision, CG Docket No. 10-145, Report and Order and Further Noticed of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (2011 CVAA Implementation Order).

2 47 U.S.C. § 618.

3 47 U.S.C. §§ 255, 617, 619.

4 47 CFR § 14.37(a).

efforts to implement sections 255, 716 or 718 of the Act with regards to its products and services as applicable, including: (1) information about the service provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of its products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.⁵

4. Section 14.34 of the Rules establishes the requirements a party must meet in order to file an informal CVAA-related complaint with the Bureau.⁶ The requirements include providing: (1) the contact information for the complainant; (2) the contact information for the equipment manufacturer or service provide named in the complaint; (3) the date or dates on which the complainant or person(s) on whose behalf the complaint is being filed either purchased, acquired, or used or attempted to purchase, acquire, or use the equipment or service about which the complaint is being made; (4) a complete statement of fact explaining why the complainant contends that the defendant manufacturer or provider is in violation of sections 255, 716 or 718 of the Act or the Commission's rules, including details regarding the service or equipment, the relief requested, and all documentation that supports the complainant's contention; (5) a certification that the complainant submitted a Request for Dispute Assistance to the Commission no less than 30 days before the complaint was filed; (6) the complainant's preferred format or method of response to the complaint by the Commission and defendant; and (7) any other information that is required by the Commission's accessibility complaint form.⁷

5. If the Commission receives an informal complaint meeting the pleading requirements established in section 14.34 of the Rules, it will forward the informal complaint to the manufacturer or service provider named.⁸ The manufacturer or service provider must file an answer to the informal complaint within twenty (20) days of service.⁹ The manufacturer or service provider bears the burden of proof to establish that its product or service is either accessible, or that accessibility is not readily achievable.¹⁰ To meet its burden, the manufacturer or service provider must "produce documents demonstrating its due diligence in exploring accessibility and achievability . . . throughout the design, development, testing, and deployment stages of a product or service."¹¹ Such documents are essential for the Commission to fulfill its statutory obligation to investigate the allegations in an informal complaint and issue an order determining whether a violation has occurred.¹² Thus, section 14.34(a) of the Rules notes that "conclusory and unsupported claims are insufficient to carry this burden of proof."¹³

6. In its answer, the manufacturer or service provider must, among other things: (1) respond specifically to each material allegation and assert any material defenses; (2) set forth any remedial actions already taken; and (3) provide any other information and documents that the Commission specifies as relevant to its consideration of the informal complaint.¹⁴ If the manufacturer or service provider asserts that making the product or service accessible is "not achievable," the answer must include additional information, including: (1) the steps taken to make the product or service usable; (2) the basis for the determination that making the product or service accessible was not achievable; and (3) all supporting

⁵ 47 CFR § 14.31(a).

⁶ 47 CFR § 14.34.

⁷ 47 CFR § 14.34(b).

⁸ 47 CFR § 14.35.

⁹ 47 CFR § 14.36(c).

¹⁰ 47 CFR § 14.36(a).

¹¹ *Id.*

¹² 47 U.S.C. § 618(a)(3)(B).

¹³ 47 CFR § 14.36(a).

¹⁴ 47 CFR § 14.36(b)(1).

documents related to the conclusion that accessibility was not achievable.¹⁵ The Commission is required to issue an order determining whether the manufacturer or service provider violated section 255, 716, or 718 of the Act, or the Commission's implementing Rules within 180 days of the filing of the informal complaint.¹⁶

7. In establishing these requirements, the Commission noted that “the primary evidence necessary to assess whether a violation has occurred resides with manufacturers and service providers, not with consumers who use their products and services.”¹⁷ The Commission also stated that “[o]nly a covered entity will have control over documents that are necessary for us to comply with the Act's directive” to investigate allegations in an informal complaint and determine whether a violation of sections 255, 716, or 718 has occurred.¹⁸

B. Factual Background

8. On December 13, 2021, Mr. Juan “Sophia” De Anda filed an informal complaint (Complaint) with the Bureau pursuant to section 14.34 of the Rules.¹⁹ The Complaint alleged that Verizon's Premium Visual Voicemail service was not accessible to him, in violation of section 255 of the Act and Part 7 of the Rules.²⁰ Mr. De Anda stated that he had a Samsung Galaxy S-10 5G phone, and subscribed to Verizon's Premium Visual Voicemail service to read voicemails on his phone.²¹ The Bureau served the Complaint on Verizon on December 17, 2021.²² Verizon requested an additional 10 days for its response, which the Bureau granted.²³ The cover letter that accompanied the Complaint required Verizon's answer (Answer) to: (1) comprehensively address all material allegations raised in the Complaint; (2) either summarize the actions that Verizon has taken to satisfy the Complaint or explain in detail why it refused or was unable to do so; (3) include a detailed description of any issues that may have impacted persons with disabilities' ability to use Verizon's visual voicemail; (4) include a statement about the period of time in which the issues would have impacted access to visual voicemail; and (5) include all actions that Verizon has taken to resolve these issues.²⁴

¹⁵ 47 CFR § 14.36(b)(2).

¹⁶ 47 U.S.C. § 618(a)(3)(B); *see also* 47 CFR § 14.37(a).

¹⁷ *2011 CVAA Implementation Order*, *supra* note 1, at 26 FCC Rcd at 14664-64, para. 252.

¹⁸ *Id.* at 14671, para. 267.

¹⁹ 47 CFR § 14.34(a). *See* Informal Complaint filed with the Enforcement Bureau by Mr. Juan “Sophia” De Anda on December 14, 2021 at 1 (on file in EB-TCD-21-00033100) (Complaint).

²⁰ Complaint at 1.

²¹ Complaint at 1.

²² Letter from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Ian Dillner, Associate General Counsel, Verizon Communications, Inc. (Dec. 17, 2021) (on file in EB-TCD-21-00033100) (December Cover Letter). The Enforcement Bureau, under delegated authority, served the Complaint on Verizon on behalf of the Commission.

²³ E-mail from Phillip Priesman, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Ian Dillner Associate General Counsel, Verizon Communications, Inc. (granting extension of Answer due date to January 18, 2022) (Dec. 17, 2021, 13:22 EDT) (on file in EB-TCD-21-00033100) (Extension E-mail). As part of the granted extension, Verizon agreed to provide to the Bureau some of the response by December 27, 2021. Verizon submitted its preliminary response on Dec. 21, 2021. *See* Letter from Ian Dillner, Associate General Counsel, Verizon Communications, Inc to Phillip Priesman, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 21, 2021) (on file in EB-TCD-21-00033100) (Preliminary Response). In granting the request, the Bureau re-served the Complaint on Jan. 4, 2022. *See* Letter from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Ian Dillner, Associate General Counsel, Verizon Communications, Inc. (Jan. 4, 2022) (on file in EB-TCD-21-00033100) (January Cover Letter).

²⁴ December Cover Letter at 1; January Cover Letter at 1.

9. Verizon filed its Answer on January 18, 2022, and supplemented its filing on January 20, 2022.²⁵ In its Answer, Verizon did not include a detailed description of any issues that may have impacted the ability of persons with disabilities to use Verizon’s visual voicemail, nor did it include any description or supporting documentation of actions that Verizon took to resolve these issues. A quick Google search identified postings on Verizon’s own message boards from customers who reported problems with the Premium Visual Voicemail service.²⁶ Yet, the only issues Verizon mentioned were complaints that went to Verizon’s customer service department and were then escalated for further review.

10. In its Answer, Verizon claimed that its Premium Visual Voicemail service is accessible, and that, if the service is not accessible, it is not readily achievable without Mr. De Anda’s cooperation to make it accessible.²⁷ Verizon also argued that Mr. De Anda failed to make a *prima facie* case and that therefore, “it is not relevant or necessary for Verizon to review the accessibility design or other aspects of the service that lie outside of specific allegations here.”²⁸ Verizon did not provide any documents showing the Company’s due diligence during the design, development, testing, or deployment stages of its Premium Visual Voicemail service. For example, Verizon failed to produce any development or testing documentation, or even indicate the accessibility features of the service.

11. On February 2, 2022, the Bureau sent a Letter of Inquiry (LOI) requesting information and documentation concerning Verizon’s Premium Visual Voicemail service to help it resolve the Complaint.²⁹ The LOI required Verizon to explain or support the Company’s statement in its Answer that it had determined that the issue identified in the Complaint was “specific to the customer and/or the customer’s device,” and directed Verizon to provide copies of all documents that support this conclusion.³⁰ The LOI also directed Verizon to identify and describe any issues that the Company was aware of regarding the use of Verizon’s Premium Visual Voicemail service by persons with disabilities and how those issues were addressed.³¹ The Bureau further instructed Verizon to provide copies of all documents describing instances where Verizon customers with disabilities were unable to use its (a) Voicemail service and (b) Premium Visual Voicemail service, and explain how such issues had been

²⁵ Answer to Informal Complaint from Cellco Partnership D/B/A Verizon Wireless (Jan. 18, 2022) (on file in EB-TCD-21-00033100) (Answer); E-mail from Ian Dillner Associate General Counsel, Verizon Communications, Inc. to Phillip Priesman, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, (Jan. 20, 2022, 16:51 EDT) (on file in EB-TCD-21-00033100) (Supplemental Answer).

²⁶ Verizon, *Verizon Community - Visual Voicemail stopped working on Galaxy s10+*, <https://community.verizon.com/t5/Samsung-Galaxy-S-Series/Visual-Voicemail-stopped-working-on-Galaxy-s10/td-p/1223296> (last visited June 9, 2022); Verizon, *Verizon Community - Re: Visual Voicemail App*, <https://community.verizon.com/t5/Samsung-Galaxy-S-Series/Visual-Voicemail-App/td-p/1167822> (last visited June 9, 2022).

²⁷ Answer at 9, 14 (Verizon refers to its service as “visual voicemail service” in its Answer.). See 47 CFR § 14.36(a) (“...the manufacturer or service provider to whom the informal complaint is directed bears the burden of proving that the product or service is accessible or, if not accessible, that accessibility is not achievable under this part or readily achievable under parts 6 and 7....”).

²⁸ Answer at 9, n.27.

²⁹ Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Ian Dillner, Associate General Counsel, Verizon Communications, Inc. (Feb. 2, 2022) (LOI).

³⁰ LOI at 3, Question 7.

³¹ *Id.* at Question 1.

resolved.³² Verizon submitted a response on February 17, 2022,³³ and a supplemental response on February 21, 2022³⁴ (collectively, LOI Response).

12. In its LOI Response, Verizon did not fully respond to the inquiries. First, Verizon did not provide documentation supporting its assertion that the complainant's problem was caused by his device. Verizon did not provide any evidence that the problem was unique to the individual complainant; nor did Verizon explain or offer evidence to show how it reached that conclusion. Second, Verizon did not respond fully to the LOI's demand for information and documentation about problems with accessing its Premium Visual Voicemail service, and how those problems were resolved.³⁵ Although Verizon acknowledged that there had been complaints, it did not provide any information or documentation related to accessibility issues received by its customer service center, even though Verizon stated its customer service center was the first point of contact for customer concerns.³⁶ Instead, Verizon provided information only on concerns that had been escalated for further review.³⁷ Even in the escalated report data, the Verizon response is not fully responsive. For example, although Verizon's LOI Response indicated that it issued a "courtesy credit," in some cases, Verizon did not describe whether or how the Company addressed the underlying issues that led to the complaints such that the same problem would not arise again (i.e., be resolved).³⁸ And the evidence Verizon provided about complaints appears to have been incomplete. For example, Verizon identified a particular Premium Visual Voicemail service issue as a duplicate complaint but failed to provide the initial complaint or describe how it was resolved.³⁹

II. DISCUSSION

13. The Bureau finds that Verizon apparently violated section 503(b)(1)(B) of the Act and sections 14.36(a), (b)(1)(v) of the Rules by failing to fulfill its obligation to fully respond to the Bureau's inquiries and to produce documentation supporting its claim that the Premium Visual Voicemail service is accessible or that, if it is not accessible, it is not readily achievable to make it accessible.

14. Section 503(b)(1)(B) of the Act, in part, provides that a person who willfully or repeatedly fails to comply with a Commission rule or order shall be liable for a forfeiture penalty.⁴⁰ Verizon engaged in such activities by failing to respond to Commission inquiries and produce required documentation. In response to being served with the Complaint by the Bureau, Verizon's Answer failed to include any documentation demonstrating that its Premium Visual Voicemail service was accessible. Despite the reminder of its burden of proof,⁴¹ and the Company's affirmative statement that its Premium Visual Voicemail service was accessible, Verizon did not produce any information or documents to support its claims regarding accessibility or that reflect any actions the Company took in conducting its due diligence in exploring accessibility and achievability—no designs, testing results, or documentation

³² LOI at 4, Document Requests 13, 14.

³³ Letter from David Haga, Associate General Counsel, Verizon Communications, Inc., to Sharon Lee, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau and Phillip Priesman, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 17, 2022) (on file in EB-TCD-21-00033100).

³⁴ E-mail from David Haga, Associate General Counsel, Verizon Communications, Inc., to Phillip Priesman, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 21, 2022, 14:56 EDT) (on file in EB-TCD-21-00033100).

³⁵ LOI at 3-4, Question 1, Document Requests 13, 14.

³⁶ LOI Response at 5, Response to Question 1.

³⁷ *Id.*

³⁸ LOI Response at 5, Response to Question 1, Response to Document Requests 13, 14.

³⁹ *Id.*

⁴⁰ 47 U.S.C. § 503(b)(1)(B).

⁴¹ December Cover Letter at 1; January Cover Letter at 1.

on how the accessibility features of its Premium Visual Voicemail service worked. The cover letter accompanying the Complaint directed Verizon to include specific information in its Answer, information that the Bureau determined would be relevant to its consideration of the Complaint. This requested information included a description of issues that may have impacted persons with disabilities' ability to use Verizon's visual voicemail and the actions taken by Verizon to resolve such issues. Verizon's Answer failed to include any of the specific information the Bureau requested in the cover letter. The Bureau subsequently issued an LOI seeking information from Verizon. This LOI provided the Company, among other things, another opportunity to submit the information and documents that should have been included in Verizon's Answer. In the LOI Response, Verizon not only did not submit the information that was missing from Verizon's Answer but was also selective in the information that it provided. For example, when directed to supply information on Premium Visual Voicemail service issues that customers had reported, Verizon chose not to include issues lodged with customer service. Instead, Verizon chose to disclose only issues that were lodged as executive level or technical complaints, a subset of overall complaints. Verizon also failed to provide information about discussions on its online community message boards that related to its visual voicemail services not working on Samsung devices.⁴²

15. Service providers subject to sections 255, 716, or 718 of the Act are required to create and maintain records pursuant to section 14.31 of the Rules.⁴³ If an informal complaint is filed or there is a Commission inquiry, these records should be available to service providers to rebut a claim of non-compliance or for their defense.⁴⁴ Therefore, Verizon should have been able to produce a record of its accessibility efforts.

16. Verizon failed to comply with section 14.34(a) of the Rules by failing to produce documentation exhibiting due diligence in exploring accessibility and achievability of its Premium Visual Voicemail service. Verizon claimed that, because the Complaint was deficient, "it was not necessary or relevant for the Company to review the accessibility design aspect of the Premium Visual Voicemail service."⁴⁵ Verizon asserted that, even if the Complaint made a *prima facie* case, the Premium Visual Voicemail service was accessible and that, if it was deemed not to be accessible, making it accessible was not readily achievable.⁴⁶

17. Verizon may not refuse to provide accessibility and achievability documentation pursuant to section 14.36(a) of the Act by baldly asserting that the Complaint failed to make a *prima facie* case. Verizon failed to cite to any rule or order that absolves Verizon of its obligation to submit information and documentation consistent with section 14.36(a), (b). Verizon also acted at its own peril by relying on its assertion that the Complaint did not state a *prima facie* case under section 14.36(a). The Commission has made clear that manufacturers and service providers "must file complete answers, including supporting records and documentation" to informal complaints.⁴⁷ Manufacturers and service providers will have "the primary evidence necessary to assess whether a violation has occurred"⁴⁸

⁴² LOI at 4-5, Requests for Documents 17, 18, 20. See also Verizon, *Verizon Community - Visual Voicemail stopped working on Galaxy s10+*, <https://community.verizon.com/t5/Samsung-Galaxy-S-Series/Visual-Voicemail-stopped-working-on-Galaxy-s10/td-p/1223296> (last visited June 9, 2022); Verizon, *Verizon Community - Re: Visual Voicemail App*, <https://community.verizon.com/t5/Samsung-Galaxy-S-Series/Visual-Voicemail-App/td-p/1167822> (last visited June 9, 2022).

⁴³ 47 CFR § 14.31(a). See also *supra* para. 3.

⁴⁴ 2011 CVAA Implementation Order, *supra* note 1, at 26 FCC Rcd at 14670-71, para. 265.

⁴⁵ Answer at 9, n.27.

⁴⁶ *Id.* at 14.

⁴⁷ 2011 CVAA Implementation Order, 26 FCC Rcd at 14668, para. 258.

⁴⁸ *Id.* at 14665, 14671, paras. 252, 267 (only the service provider or manufacturer will have control over documents necessary for the Commission to resolve the complaint).

18. Moreover, as the Bureau explained in its order granting Mr. De Anda's informal complaint, Verizon's assertion was without merit.⁴⁹ The Bureau rejected Verizon's claims that the Complaint did not make a *prima facie* case because the Complaint: (1) failed to provide a complete statement of the facts "explaining the circumstances surrounding the complaint;"⁵⁰ (2) did not allege that Premium Visual Voicemail was not accessible or usable; and (3) did not state or include any supporting documentation demonstrating that Verizon was in violation of section 255, 716, or 718 of the Act, nor the Rules.

19. As set forth in the order, the Bureau found that the Complaint met all of the requirements of Section 14.34(b) of the Rules.⁵¹ First, the Complaint included a complete statement of facts by providing a detailed description of the circumstances that gave rise to the Complaint.⁵² Second, the Bureau found that the Complaint alleged that Verizon's Premium Visual Voicemail service was not accessible, and alleged a statutory violation, as the complainant stated that he had a right to "accessible voicemail under section 255 and 47 CFR Part 7."⁵³ Further, the Bureau reiterated that informal complaints need only meet the minimum requirements, and that neither the Commission's rules nor the relevant orders required the complainant to provide additional documentation in the Complaint.⁵⁴ In the ordinary course of business, Verizon was required to create and maintain records of its efforts.⁵⁵ Verizon has offered no lawful basis for not satisfying its obligation to produce such records.

20. Section 14.36(b)(1)(v) of the Rules requires any service provider to whom the Commission serves an informal complaint to respond to any inquiries set forth by the Commission.⁵⁶ The Commission sought information designed to enable it to look closely at issues that may have impacted persons with disabilities' ability to use Verizon's visual voicemail.⁵⁷ Verizon did not provide a complete response to the Commission's requests for information and supporting documentation.

21. A manufacturer or service provider's failure to submit such information and records severely limits the Commission's ability to determine if a product or service is accessible or usable. Verizon's failure to submit information and records apparently violated section 503(b)(1)(B) of the Act and section 14.36(a), (b)(1)(v) of the Rules. And its apparent noncompliance had a direct and substantial impact on the Bureau's ability to review the Complaint and determine whether Verizon's Premium Visual Voicemail service was accessible.

III. PROPOSED FORFEITURE

22. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule,

⁴⁹ *In the Matter of Cellco Partnership D/B/A Verizon Wireless*, Order, DA 22-622, 2022 WL 2128683 (EB June 9, 2022) (*Verizon Order*). The Commission gave ample notice that complainants are not required to include information beyond the required information specified in section 14.34(b) of the Rules. *See 2011 CVAA Implementation Order*, 26 FCC Rcd at 14664, para. 252.

⁵⁰ Specifically, Verizon claims Mr. De Anda failed to acknowledge that he was able to resolve his issue by working with Samsung. *See Answer at 9-10, n.18.* In his response to Verizon's Answer, Mr. De Anda denies that his problem was resolved by Samsung. *See E-mail from Juan De Anda to Phillip Priesman, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 19, 2022, 10:02 EDT) (De Anda Response).*

⁵¹ *Verizon Order at*4, para. 13.*

⁵² *Id.*

⁵³ *Id.*, quoting Complaint at 1-2.

⁵⁴ *Verizon Order at *4, para. 14, n.48.*

⁵⁵ 47 CFR § 14.31(a).

⁵⁶ 47 CFR § 14.36(b).

⁵⁷ December Cover Letter at 1; January Cover Letter at 1.

regulation, or order issued by the Commission[.]”⁵⁸ Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Verizon of up to \$220,213 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$2,202,123 for any single act or failure to act.⁵⁹ In exercising our forfeiture authority, the Commission must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁶⁰

23. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”⁶¹ In this case, the Bureau, acting under delegated authority, proposes a forfeiture for the Company’s apparent failure to submit required information and documentation by (1) January 18, 2022 (the date Verizon’s Answer was due) and (2) February 17, 2022 (the date Verizon’s LOI Response was due).

24. The Commission’s forfeiture guidelines establish base penalties for certain violations and identify criteria for determining the appropriate penalty in various cases.⁶² Under these guidelines, the Commission or staff may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.⁶³ The Commission or staff may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.⁶⁴ The forfeiture guidelines listed in section 1.80 of the Commission’s rules specifically “are intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”⁶⁵

25. Section 1.80 of the Rules specifies a base forfeiture of \$4,000 for a party’s failure to respond to Commission communications.⁶⁶ The Commission and Bureau have imposed a range of base forfeitures to address a party’s failure to provide required information—from \$25,000 in cases involving a target’s failure to respond to Bureau LOIs,⁶⁷ to base forfeitures of \$50,000 for failure to file the Annual

⁵⁸ 47 U.S.C. § 503(b).

⁵⁹ 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect the inflationary adjustments to the forfeitures specified in section 503(b) of the Act. *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 21-1631, 2021 WL 6135287 (EB Dec. 22, 2021).

⁶⁰ 47 U.S.C. § 503(b)(2)(E).

⁶¹ 47 U.S.C. § 503(b)(6)(B).

⁶² 47 CFR § 1.80(b)(10), note to paragraph (b)(10).

⁶³ 47 CFR § 1.80(b)(10).

⁶⁴ 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10).

⁶⁵ *See Commission’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (1997 *Forfeiture Guidelines*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁶⁶ 47 CFR. § 1.80.

⁶⁷ *GPSPS, Inc.*, Forfeiture Order, 30 FCC Rcd 7814, para. 2 (2015) (affirming the forfeiture proposed in the Notice of Apparent Liability for Forfeiture) (*GPSPS Forfeiture Order*); *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2533, para. 28 (2015) (proposing a \$25,000 forfeiture for failure to respond to an LOI) (forfeiture paid) (*GPSPS NAL*); *Net One International, Net One, LLC, Farrahtel International, LLC*, Forfeiture Order, 29 FCC Rcd 264, para. 1 (EB Jan.15, 2014) (assessing the monetary forfeiture proposed in the Notice of Apparent Liability for Forfeiture) (*Net One Forfeiture Order*); *Net One International, Net One, LLC, Farrahtel International, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16493, 16496, para. 8 (EB Dec. 9, 2011) (proposing a \$25,000 forfeiture for failure to respond to an LOI) (*Net One NAL*).

Telecommunications Reporting Worksheet.⁶⁸ In each case, the orders have emphasized the impact on the Commission's ability to carry out its duties as a result of the failures.

26. The Bureau finds that Verizon's actions have negatively impacted the Bureau's ability to carry out its duties, and that its failures to respond are especially egregious in light of our obligation to issue an order within the 180-day statutory deadline required by the CVAA.⁶⁹ The Commission staff must rely on manufacturers and service providers to produce the information and documentation required by the informal complaint process to make an accessibility determination. If a manufacturer or service provider fails to produce such information and documentation, the Commission or the Bureau might not be able to meet its statutory deadline for issuing an order. It imperils our ability to determine whether a manufacturer or service provider has violated sections 255, 716 or 718 of the Act. Consequently, where the staff finds that there has been such a violation, failing to provide the required information in a timely and comprehensive manner makes it virtually impossible to propose remedies in the initial 180-day order. This delay undercuts the purposes of having a deadline.

27. The Bureau requested specific information through both the cover letter accompanying the Complaint and the LOI to help in its consideration of the Complaint's allegations. Verizon intentionally chose not to produce the information. Moreover, in its Answer, Verizon deliberately chose not to produce information and documents that would have demonstrated whether its Premium Visual Voicemail service was accessible, as Verizon claimed. Verizon claimed that "because the complaint does not establish a *prima facie* violation, it is not relevant or necessary for Verizon to review the accessibility design or other aspects of the service that lie outside of the specific allegations here."⁷⁰ Verizon, therefore, willfully chose not to produce information and documentation that would have assisted the Bureau in making an accessibility determination. And only Verizon was in a position to produce such documents.⁷¹

28. Verizon's failure to provide the required information harmed the Bureau's ability to meet its obligation regarding the Complaint. The Bureau was forced to make its determination based on the *lack* of relevant information because Verizon failed to meet its burden of proof. Verizon's actions wasted Commission resources and delayed potential relief to the complainant.

29. The Bureau proposes a base forfeiture of \$50,000 for Verizon's apparent violations of section 14.36 of the Rules and its failure to provide the information required in the cover letter that accompanied the Complaint. This amount is consistent with forfeitures the Bureau proposed in other instances where an entity's failure to provide timely and comprehensive information negatively affected staff's ability to conduct a thorough investigation.⁷² The Bureau proposes a base forfeiture of \$25,000 for failing to respond adequately and completely to the Bureau's LOI. This amount is consistent with prior forfeitures the Bureau proposed to address involving the failure of an entity to respond properly to an LOI.⁷³ The Bureau also proposes an upward adjustment of \$25,000 for Verizon's apparently willful decision not to provide the Bureau with all of the information it required. This deliberate action had a

⁶⁸ *Correct Solutions*, Notice of Apparent Liability for Forfeiture, DA 22-303, 2022 WL 1000385 (EB Apr. 1, 2022) (proposing \$50,000 base forfeiture against the company for its failure to submit a timely and complete response to USAC's directives); *Telnexus, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-227, 2022 WL 741891 (EB Mar. 9, 2022) (*Telnexus*) (proposing \$50,000 base forfeiture for failure to file the Annual Telecommunications Reporting Worksheet and \$25,000 base forfeiture for failing to respond to a Bureau LOI); *Blue Casa Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd. 6333 (EB July 6, 2020) (proposing \$50,000 base forfeiture for failure to submit a timely and complete response to USAC's directives).

⁶⁹ 47 U.S.C. § 618(a)(3)(B); *see also* 47 CFR § 14.37(a).

⁷⁰ Answer at 9, n.27.

⁷¹ *See supra* paras. 3 and 7.

⁷² *See supra* n.67.

⁷³ *See supra* n.67; *see also Telnexus*.

direct impact on the Bureau and on the complainant. Therefore, consistent with the Act and the Rules,⁷⁴ the Bureau finds Verizon apparently liable for a forfeiture of one hundred thousand dollars (\$100,000) for its failure to comply with the Rules and Commission orders.⁷⁵

IV. CONCLUSION

30. The Bureau has determined that Verizon apparently willfully violated sections 154(i), (j) and 503 of the Act and section 14.36(a), (b)(1)(v) of the Rules. As such, Verizon is apparently liable for a forfeiture of \$100,000.

V. ORDERING CLAUSES

31. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act⁷⁶ and section 1.80 of the Commission's rules,⁷⁷ Cellco Partnership D/B/A Verizon Wireless is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of One Hundred Thousand Dollars (\$100,000.00) for violating a Commission order issued under sections 4(i), (j) and 403 of the Act and willful violations of section 14.36(a), (b)(1)(v) of the Commission's rules,⁷⁸ and the *2011 CVAA Implementation Order*.⁷⁹

32. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁸⁰ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Cellco Partnership D/B/A Verizon Wireless **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 35 below.

33. Cellco Partnership D/B/A Verizon Wireless shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal Communications Commission, at Lisa.Ford@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission's Registration System (the Commission's FRN Management and Financial system).⁸¹ The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁸²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated.⁸³ Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block

⁷⁴ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10).

⁷⁵ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

⁷⁶ 47 U.S.C. § 503(b).

⁷⁷ 47 CFR § 1.80.

⁷⁸ 47 U.S.C. §§ 154(i), (j), 218, 403; 47 CFR §§ 1.17(a)(2), 14.36(a), (b)(1)(v).

⁷⁹ *2011 CVAA Implementation Order*, *supra* note 1.

⁸⁰ 47 CFR § 1.80.

⁸¹ Payments made using CORES do not require the submission of an FCC Form 159.

⁸² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁸³ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁸⁴ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

34. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.⁸⁵ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

35. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.⁸⁶ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Sharon Lee at Sharon.Lee@fcc.gov, Karen Johnson at Karen.Johnson@fcc.gov, and Phillip Priesman at Phillip.Priesman@fcc.gov.

36. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.⁸⁷ Any claim of inability to pay must specifically identify

⁸⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁸⁵ 47 CFR § 1.1914.

⁸⁶ 47 CFR §§ 1.16, 1.80(f)(3).

⁸⁷ 47 U.S.C. § 503(b)(2)(E).

the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and the Commission retains the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2) support that result.⁸⁸

37. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Ian Dillner, Associate General Counsel, Cellco Partnership D/B/A Verizon Wireless, 1300 I Street, NW, Suite 500 East, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Acting Chief
Enforcement Bureau

⁸⁸ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).